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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,833	02/13/2002	Jerry F. Fischer	LGT / 153DV2	8007

26875 7590 08/27/2003

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EXAMINER

NEGRON, ISMAEL

ART UNIT PAPER NUMBER

2875

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/074,833

Applicant(s)

FISCHER ET AL.

Examiner

Ismael Negron

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-46 and 80-84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-46 and 80-84 is/are allowed.
- 6) ☐ Claim(s) 16, 18, 20, 21 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 17, 19 and 22-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on June 30, 2003 has been entered. No claims have been amended or cancelled. Claims 80-84 have been added. Claims 16-46 and 80-84 are still pending in this application, with claims 16, 26, 31 and 80 being independent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 16, 18, 20, 21 and 26-30 rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher (U.S. Pat. 4,363,086).

Fletcher discloses a luminaire assembly having:

- **a ballast housing**, Figure 1, reference number 10;
- **a wiring box**, Figure 1, reference number 5;
- **a fastening member**, Figure 1, reference number 21;
- **the fastening member operatively connected to the wiring box**, column 2, line 62;

- **the wiring box being engageable with an lower end of th
ballast housing for pivotally supporting such ballast housing,
Figure 2;**
- **the ballast housing including a flange member, Figure 1,
reference number 20;**
- **the flange member being adapted for engaging the fastening
member to support the ballast housing, column 2, lines 60-63;**
- **the ballast housing having at least one opening adjacent a
lower end;**
- **the wiring box having at least one tab member formed
adjacent a lower end, Figure 1, reference number 13; and**
- **the tab member being for being secure to the ballast housing,
column 2, lines 55-59.**

Fletcher discloses all the limitations of the claims, but with a reverse location for the different element forming the fastening arrangement between the ballast housing and the wiring box. In addition, the wiring box of Fletcher is cylindrical and does not include a pair of side panels and a pair of end panels/

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to reverse the location of the fastening arrangement of Fletcher, since it has been held that rearranging parts of a prior art structure involves only routing skill in the art. *In re Japikse*, 86 USPQ 70. In this case, the invention of Fletcher appears to be equally functional with, for example, the fastening member being

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disposed in the wiring box instead of in the ballast housing as claimed in the instant application.

Allowable Subject Matter

3. Claims 31-46 and 80-84 are allowed.
4. Claims 17, 19 and 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed June 30, 2003 have been fully considered but they are not persuasive.
6. Regarding the Examiner's rejection of claim 16 under 35 U.S.C. 103(a) as unpatentable over Fletcher (U.S. Pat. 4,363,086), the applicant argues that the cited reference fails to disclose, or suggest, all the features of the claimed invention, specifically the ballast housing being pivotally supported by the wiring box. In addition, the applicant argues that it would be structurally impossible to reverse the ballast housing with the wiring box.

In response to applicant's argument that Fletcher fails to disclose the ballast housing being pivotally supported by the wiring box, the applicant is directed to Figure 2. As seen in this figure ballast housing 10 is pivotally connected to wiring box 5, the

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fact that the ballast housing is actually supporting the wiring box 5, and not the opposite, fails to patentably distinguish the claimed invention from Fletcher since mere reversal of the structure would overcome such differences.

Regarding applicant's argument that it is not structurally possible to reverse the ballast housing/wiring box arrangement, the applicant is advised that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case while it might very well be true that reversing the ballast housing/wiring box arrangement is structurally impossible, such considerations are not relevant since modifying the structure of Fletcher would have been well within the capabilities and knowledge of ordinary skill in the art at the time the invention was made.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negrón whose telephone number is (703) 308-6086. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (703) 305-4939. The facsimile machine number for the Art Group is (703) 308-7382.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.



ALAN CARIASO
PRIMARY EXAMINER

Inr

August 18, 2003